

AMENDED IN SENATE APRIL 1, 2009

SENATE BILL

No. 748

Introduced by Senator Leno

February 27, 2009

An act to add Section ~~6254.30 to the Government Code, relating to public records~~ *14029.5 to the Penal Code, relating to witness relocation and assistance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 748, as amended, Leno. ~~Public records: Witness Relocation and Assistance Program. Witness Relocation and Assistance Program: address records.~~

Existing law prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed official, as defined. It also prohibits, and makes punishable as a misdemeanor or felony, as specified, any person from knowingly posting this information or that of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm to that individual.

This bill would prohibit a state or local agency from posting on the Internet the home address or telephone number of any participant in the Witness Relocation and Assistance Program, as defined. It also prohibits, and makes punishable as a misdemeanor or felony, as specified, any person from knowingly posting this information or that of the participant's residing spouse or child on the Internet knowing that person is a participant in the Witness Relocation and Assistance Program and intending to cause imminent great bodily harm to that individual. By making a violation of these provisions a crime, this bill would impose a state-mandated local program.

Existing law establishes the Witness Relocation and Assistance Program.

This bill would provide that no person, state, or local public agency, or private entity shall knowingly post the home address or telephone number of any witness or witness family member participating in the Witness Relocation and Assistance Program, and that a violation of these provisions would be a misdemeanor punishable by a fine of up to \$2,500, or up to 6 months in a county jail, or by both that fine and imprisonment. The bill would also provide that a violation that leads to the bodily injury of the witness, or the witness' family members who are participating in the program, is a misdemeanor punishable by a fine of up to \$5,000, or up to one year in a county jail, or by both that fine and imprisonment. The bill would authorize participants in the program to submit opt-out forms to Internet search engine providers to notify those providers of the participants, and to prevent inclusion of the participants addresses and telephone numbers in public Internet search databases, as specified. The bill would authorize a witness whose home address or telephone number is made public as a result of a violation to bring an action seeking injunctive or declaratory relief. The bill would further provide that no person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of a witness with the intent to cause imminent great bodily harm to the witness or to any person residing at the witness' home address and would authorize an action for damages, as specified, for a violation of these provisions.

By creating new crimes, this bill would impose a state-mandated local program.

~~(2) The~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14029.5 is added to the Penal Code, to
2 read:

1 14029.5. (a) No person, state or local public agency, or private
2 entity shall knowingly post the home address or telephone number
3 of any witness or witness family member participating in the
4 Witness Relocation and Assistance Program (WRAP) on the
5 Internet. A violation of this subdivision is a misdemeanor
6 punishable by a fine of up to two thousand five hundred dollars
7 (\$2,500), or imprisonment of up to six months in a county jail, or
8 by both that fine and imprisonment. A violation that leads to the
9 bodily injury of the witness, or a family member of the witness who
10 is participating in the program, is a misdemeanor punishable by
11 a fine of up to five thousand dollars (\$5,000), or imprisonment of
12 up to one year in a county jail, or by both that fine and
13 imprisonment.

14 (b) Upon admission to the WRAP program, local or state
15 prosecutors shall give each participant a written opt-out form for
16 submission to relevant Internet search engine companies or
17 entities. This form shall notify entities of the protected person and
18 prevent the inclusion of participant's addresses and telephone
19 numbers in public Internet search databases.

20 (c) A witness whose home address or telephone number is made
21 public as a result of a violation of subdivision (a) may bring an
22 action seeking injunctive or declaratory relief in any court of
23 competent jurisdiction. If a jury or court finds that a violation has
24 occurred, it may grant injunctive or declaratory relief and shall
25 award the witness court costs and reasonable attorney's fees.

26 (d) (1) No person, business, or association shall solicit, sell,
27 or trade on the Internet the home address or telephone number of
28 a witness with the intent to cause imminent great bodily harm to
29 the witness or to any person residing at the witness' home address.

30 (2) Notwithstanding any other provision of law, a witness whose
31 home address or telephone number is solicited, sold, or traded in
32 violation of paragraph (1) may bring an action in any court of
33 competent jurisdiction. If a jury or court finds that a violation has
34 occurred, it shall award damages to that witness in an amount up
35 to a maximum of three times the actual damages, but in no case
36 less than four thousand dollars (\$4,000).

37 ~~SECTION 1. Section 6254.30 is added to the Government~~
38 ~~Code, to read:~~

39 ~~6254.30. (a) For purposes of this section, "participant in the~~
40 ~~Witness Relocation and Assistance Program" means an individual~~

1 certified by law enforcement as being a participant in the Witness
2 Relocation and Assistance Program (Title 7.5 (commencing with
3 Section 14020) of Part 4 of the Penal Code).

4 (b) No state or local agency shall post the home address or
5 telephone number of any participant in the Witness Relocation
6 and Assistance Program on the Internet without first obtaining the
7 written permission of that individual.

8 (c) No person shall knowingly post the home address or
9 telephone number of any participant in the Witness Relocation
10 and Assistance Program, or of the participant's residing spouse or
11 child, on the Internet knowing that person is in the Witness
12 Relocation and Assistance Program and intending to cause
13 imminent great bodily harm that is likely to occur or threatening
14 to cause imminent great bodily harm to that individual. A violation
15 of this subdivision is a misdemeanor. A violation of this
16 subdivision that leads to the bodily injury of the individual, or his
17 or her residing spouse or child, is a misdemeanor or a felony.

18 (d) (1) No person, business, or association shall publicly post
19 or publicly display on the Internet the home address or telephone
20 number of any participant in the Witness Relocation and Assistance
21 Program if that individual has made a written demand of that
22 person, business, or association to not disclose his or her home
23 address or telephone number. A written demand made under this
24 paragraph shall be effective for four years and may be renewed
25 for an additional four years if law enforcement certifies the criminal
26 proceeding is pending, regardless of whether or not the individual
27 is still a participant in the Witness Relocation and Assistance
28 Program prior to the end of the four-year period. For this purpose,
29 "publicly post" or "publicly display" means to intentionally
30 communicate or otherwise make available to the general public.

31 (2) A participant in the Witness Relocation and Assistance
32 Program whose home address or telephone number is made public
33 as a result of a violation of paragraph (1) may bring an action
34 seeking injunctive or declarative relief in any court of competent
35 jurisdiction. If a jury or court finds that a violation has occurred,
36 it may grant injunctive or declarative relief and shall award the
37 official court costs and reasonable attorney's fees.

38 (e) (1) No person, business, or association shall solicit, sell, or
39 trade on the Internet the home address or telephone number of a
40 participant in the Witness Relocation and Assistance Program with

1 the intent to cause imminent great bodily harm to the individual
2 or to any person residing at the individual's home address.

3 (2) ~~Notwithstanding any other provision of law, a participant~~
4 ~~in the Witness Relocation and Assistance Program whose home~~
5 ~~address or telephone number is solicited, sold, or traded in violation~~
6 ~~of paragraph (1) may bring an action in any court of competent~~
7 ~~jurisdiction. If a jury or court finds that a violation has occurred,~~
8 ~~it shall award damages to that individual in an amount up to a~~
9 ~~maximum of three times the actual damages but in no case less~~
10 ~~than four thousand dollars (\$4,000).~~

11 (f) ~~An interactive computer service or access software provider,~~
12 ~~as defined in Section 230(f) of Title 47 of the United States Code,~~
13 ~~shall not be liable under this section unless the service or provider~~
14 ~~intends to abet or cause imminent great bodily harm that is likely~~
15 ~~to occur or threatens to cause imminent great bodily harm to a~~
16 ~~participant in the Witness Relocation and Assistance Program.~~

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.